way, after an elaborate examination of the English books, that, in my opinion, the English cases do not apply the principle of wasting investment to premiums on authorized permanent investments. But, even if they did, I should consider that, in view of the latitude of investment allowed in Massachusetts and the great fluctuations of American securities, it would be undesirable to accept that principle at present, and still more so to adopt the simple device of the tables as the means of working out that principle.

I express no opinion upon the question of jurisdiction, which I have not thought it necessary to examine, as both parties desire to have the case dealt with upon its merits now.

I am authorized to state that the Chief Justice and Mr. Justice CHARLES ALLEN concur in the views which I have expressed.

United States Circuit Court, W. D. Michigan.

MINERAL RANGE RAILROAD CO. *v.* DETROIT & LAKE SUPERIOR COPPER CO.

A state statute provided that proceedings for the condemnation of land for railway purposes should be instituted in the probate court of the proper county; that the necessity for taking the lands, and their value, should be determined by commissioners or a jury selected by such court; and that such proceedings should only be subject to review by the Supreme Court. Under this statute a railroad company petitioned the probate court for the condemnation of defendant's lands. The defendant answered the petition, and demanded a removal of the case to the federal court. *Held*, that the case was removable directly from the probate court.

It is no objection to the jurisdiction of the federal court in such cases that it involves the exercise of the right of eminent domain.

ON motion to remand.

On the 14th of September, 1885, the Mineral Range Railroad Company filed its petition in the probate court for the county of Houghton, for the condemnation of certain lands owned by the defendant in the village of Hancock, for the purpose of constructing a branch of its road across these lands from Houghton to Hancock. The defendant shortly thereafter answered the petition, and upon the same day filed its petition in the probate court for the removal of the cause to this court, upon the ground that it was a citizen of the state of Connecticut. The removal was ordered, and a transcript of the record immediately filed in this court. The railroad company thereupon moved for the appointment of three commissioners

under the statute, accompanying its motion with an oral motion to remand for want of jurisdiction.

W. P. Healy, for the railroad company, petitioner.

T. L. Chadbourne, *C. B. Grant*, and *Otto Kirchner*, for the copper company.

The opinion of the court was delivered by

BROWN, J.—In delivering the opinion of the Supreme Court in *Gaines* v. *Fuentes*, 92 U. S. 10, 19, Mr. Justice FIELD remarked that the Removal Act of 1867 covered every possible case involving a controversy between citizens of the state where the suit was brought and citizens of other states, if the matter in dispute, exclusive of costs, exceeded the sum of $500; that it mattered not whether the suit was brought in a state court of limited or general jurisdiction. "The only test was, did it involve a controversy between citizens of the state and citizens of other states, and did the matter in dispute exceed a specified amount? And a controversy was involved in the sense of the statute whenever any property or claim of the parties capable of pecuniary estimation was the subject of the litigation, and was presented by the pleadings for judicial determination." That controversies of the general nature of this are "suits of a civil nature at law" was settled in *Boom Co.* v. *Patterson*, 98 U. S. 403, which was also a proceeding under a statute of Minnesota for the condemnation of land under the right of eminent domain. There is, however, a difference in the methods of procedure under the two statutes which takes the case under consideration out of the language of the opinion in the Minnesota case, and involves it in a difficulty which was not there presented. In Minnesota the course was for the corporation to apply to the District Court of the county for the appointment of commissioners to appraise the value of the land, and take proceedings for its condemnation. If the award of the commissioners was not satisfactory to either party, an appeal might be taken to the District Court, where it was entered by the clerk as "a case upon the docket;" the persons claiming interest in the land being designated as plaintiffs, and the company seeking its condemnation as defendant. The court was then required "to proceed to hear and determine such case in the same manner" that other cases were heard and determined, with the aid of a jury, unless a jury was waived. The value of the land

being assessed, the amount of the assessment was to be entered as a judgment against the company, subject to a review by the Supreme Court. A similar question arose in one of the *Pacific Railroad Removal Cases*, 115 U. S. 1, and was held to have been answered by the reasoning in the *Patterson Case*.

In this state the act provides that, in case the railroad company is unable to purchase the needed land, it shall present its petition to the Probate Court, or the judge thereof, with proof of service of notice to all persons interested, who may show cause against the prayer of the petition and may disprove any of the facts alleged therein. Upon hearing the proofs and allegations of the parties, if no sufficient cause is shown against granting the prayer of the petition, the court or judge shall appoint three freeholders as commissioners to determine the necessity for taking the land, and to appraise the damages to be allowed to the owner, provided that either party may demand a jury whose powers shall be the same as those of the commissioners. Upon the report of the commissioners or the jury being filed, the court shall confirm the same, unless for good cause shown by either party, and shall direct to whom the money shall be paid. Within twenty days after the confirmation of the report either party may appeal to the Supreme Court, specifying the objections to the proceedings, and the Supreme Court shall pass upon such objections only, all other being deemed to have been waived.

There is no provision in this act for an appeal to the court from the award of the commissioners, and the forming of an issue to be tried by a jury, as were the cases in Minnesota and Kansas. But if a jury be demanded, the case is at once referred to them, and they proceed to pass both upon the necessity for condemning the lands in question, and upon the amount of compensation to be awarded the owners, acting, as has been held by the Supreme Court, both as judges of law and of fact, although by the terms of the act, the judge may attend the jury to decide questions of law and administer oaths to witnesses. In *Hess* v. *Reynolds*, 113 U. S. 73, there was also a provision for an appeal from the allowance of the commissioners appointed by the Probate Court to the Circuit Court of the county, where an issue was framed for trial by jury. Did the statute for the condemnation of land also provide for an appeal from the Probate Court to the Circuit Court, and the framing of an issue there, we should find no difficulty in holding, as was held in

that case and in *Boom Co.* v. *Patterson*, that the removal should be had from the Circuit Court, and not from the Probate Court. But does the failure of the statute to provide for an appeal from the award of the commissioners to the Circuit Court, and the framing of an issue there, deprive the case of its removable character? We think not. Had the petition been in the general form contemplated in some cases for the condemnation of all the land within the county needed for the purposes of the railway, making all the owners along the line of its road parties defendant, it might be a serious question whether a single non-resident proprietor whose property was sought to be taken could remove the case, even so far as it respected himself, to this court, although this also seems to be answered in the *Pacific Railroad Cases*, 115 U. S. 19. But we do not find it necessary to determine whether there might not be cases of this description to which the removal acts would not apply. In this case the railroad seeks the condemnation of a single specific parcel owned by the defendant. To its petition the defendant has filed its answer, setting forth its reasons why the prayer of the petition should not be granted. There is here a single, indivisible suit or controversy to obtain the possession of land in which the railroad company is plaintiff and the copper company is defendant, and the case does not differ essentially from an ordinary action of ejectment, except in the fact that plaintiff offers compensation for the lands it seeks to condemn.

Further objection is made to our assumption of jurisdiction, for the reason that it involves the exercise of the right of eminent domain, which is claimed to be non-judicial in its character, and therefore a special proceeding, to be carried on solely by virtue of the statute, in the courts of the state therein designated. The same position was taken by the landowner in the case above referred to, viz., that the proceeding to take private property for public use was an exercise by the state of its sovereign right of eminent domain, and with its exercise, the United States, a separate sovereignty, had no right to interfere. The position was said to be a sound one so far as the act appropriating the property was concerned; that when the use is public, the necessity or expediency of appropriating any particular property is not a subject of judicial cognisance. "The property may be appropriated by an act of the legislature, or the power of appropriating it may be delegated to private corporations, to be exercised by them in the execution of works in which the

public is interested. But, notwithstanding the right is one that appertains to sovereignty, when the sovereign power attaches conditions to its exercise, the inquiry whether the conditions have been observed is a proper matter for judicial cognisance."

We understand the meaning of this language to be substantially this: That the right of eminent domain, or of appropriating private property to public use, is a sovereign right, vested in the state itself, acting through its legislature; that the state may delegate this right to railway and other corporations, as it has done in this state, and may impose upon the exercise of the right such conditions as it chooses, with reference to the manner in which the application shall be made, the necessity for the appropriation of any particular lands determined, and their value ascertained, and when the court observes that the necessity of appropriating any particular property is not a subject of judicial cognisance, it means simply that it is not *necessarily* a subject of judicial cognisance. The legislature may seize upon and appropriate directly a piece of private property upon paying the owner its value, or it may authorize a corporation to do this by an appeal to its judicial tribunals. The court itself has no right to appropriate property; but in carrying out the will of the legislature, and in making the proper inquiries as to the necessity of the appropriation and the value of the lands, it is exercising judicial power. "If that inquiry take the form of a proceeding before the courts between parties, the owners of the land on the one side, and the company seeking the appropriation on the other, there is a controversy which is subject to the ordinary incidents of a civil suit, and its determination derogates in no respect from the sovereignty of the state." In the Minnesota case, as reported in 3 Dill. 465, it appears that the boom company was authorized by a special act to condemn the land necessary to its business, while in this state the same power is conferred by a general act upon all railroad companies. There is, however, no practical difference in the nature of the power vested in the courts in each case.

It is true, there are some expressions in the cases of *Toledo, &c., Ry. Co.* v. *Dunlap*, 47 Mich. 466, 452, and *Port Huron, &c., Ry. Co.* v. *Voorheis*, 50 Mich. 506, which indicate that, in the opinion of the Supreme Court, these proceedings to condemn lands are not in themselves, and never have been, regarded as judicial proceedings, because the legislature might, and sometimes does, authorize such proceedings to be carried on before highway commis-

sioners or other non-judicial bodies, and because, even when acting by appointment from a court of justice, the jury or commissioners are judges of the law as well as of the facts. But Mr. Justice CAMPBELL afterwards qualifies this remark to a certain extent by observing that "they are not judicial proceedings in the ordinary sense;" a comment in which we entirely concur. We understand, however, that whenever a court of justice is called upon to determine or adjust the rights of two or more parties standing adversely to each other, the court is acting in a judicial capacity, whether the decision of the question presented lies with a judge, or a jury, commissioners or referees selected by the court. Especially is this the case when such proceedings are subject to review by an appellate tribunal. In *In re New York Cent. Rd.*, 56 N. Y. 407, 409, the Court of Appeals held that the power of determining what lands were necessary to be appropriated to the use of railways was a judicial question, and, when controverted, the facts must obviously, in some form, be laid before the court to enable it to decide. So, in *Warren* v. *Wisconsin Rd.*, 6 Biss. 425, which was also a proceeding to condemn land for railway purposes, a motion was made to remand, on the ground that, as it was a proceeding by the state in the exercise of its right of eminent domain, the suit was to be regarded as substantially a suit against the state, of which the federal court had no jurisdiction. The motion, however, was denied; the court holding that the state had no interest in the controversy, and that, although it was a special proceeding, it was a suit within the meaning of removal acts. *In Railway Co.* v. *Whitton's Adm'r.*, 13 Wall. 270, the Supreme Court holds that when a general rule as to property, or personal right or injuries to either, is established by state legislation, its enforcement by the federal courts in a case between proper parties is a matter of course, and the jurisdiction of the court in such case is not subject to state limitation. In *Weston* v. *City Council of Charleston*, 2 Pet. 449, it was said that the term "suit" was certainly a very comprehensive one, and was understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him. But we think this point is also covered by the case of *Kohl* v. *United States*, 91 U. S. 367, in which the Circuit Court was sustained in assuming jurisdiction of a proceeding to enforce the right of eminent domain in favor of the United States, to condemn lands for a government building, although there was no

statute authorizing the proceeding. That it was a suit was said to admit of no question. If proceedings to condemn be a suit, then the conduct and determination of such suit must be an exercise of judicial power.

But conceding that if the only question in this case were the amount of damages to be paid by the railroad company, the jurisdiction of this court would be sustained by the authorities above cited, it is insisted that these cases are inapplicable, because by the statute of this state the jury or commissioners must pass upon the question of the necessity for taking the property, as well as the amount of damages to be awarded. But we think that in this particular counsel overlook the distinction between the *power* to condemn, which confessedly resides in the state, and *proceedings* to condemn, which the state has delegated to its courts. The proceeding is certainly not deprived of its character as a suit by reason of its taking cognisance of this additional question; and if it be a suit, the right of removal attaches. Wherever a right is given by the law of a state, and the courts of such state are invested with the power of enforcing such right, the proceeding may be removed to a federal court if the other requisites of removability exist.

The motion to remand must be denied, and the case will proceed in the manner provided for in the state statute.

Nature of Removable Suits.—The opinion of the principal case fully accords with the previous rulings of the courts, on the points involved, and contains a very clear statement of the proper construction of the federal removal act as to the nature of a removable suit. The language of the several removal acts concerning the nature of the suit is quite broad. Sect. 639, of the Act of 1866, provides for the removal of "*any suit* * * wherein the amount in dispute * * exceeds the sum or value of five hundred dollars," and, of course, there must be either diversity of citizenship of the parties to the suit, or its determination must depend upon the construction of a federal law. "*Any suit* of a civil nature at law or in equity," is the language of sect. 2 of the Removal Act of March 3d, 1875; the language of either act being broad enough to embrace all suits of a civil nature where the sum in dispute exceeds $500, unless it was not contemplated by Congress that the federal courts should have jurisdiction of certain causes which, from their peculiar nature, belong exclusively to the state courts. The nature of the controversy is not essential to determine the question of removability, for the right of removal arises from the laws of Congress alone. This proposition, although at first doubted, is now well established. State legislation cannot impair the jurisdiction of the federal courts over controversies between citizens of different states: *Hyde* v. *Stone*, 20 How. 175; *Suydam* v. *Broadnax*, 14 Pet. 67; *Union Bank* v. *Jolly's Administrators*, 18 How. 503. "All cases which fall within the ordinary notion of an action at law, or contract, or tort, or of a suit in equity, are undoubtedly embraced by the lan-

guage" of the removal acts: Dillon on Removal, 3d ed. p. 49, sect. 41.

Test of Removability.—Is there a controversy between citizens of different states, is the controlling question. The general principle applicable is that a controversy between citizens is involved in a suit whenever any property or claim of the parties, capable of pecuniary estimation, is the subject of the litigation, and is presented by the pleadings for judicial determination. This rule was laid down in *Gaines* v. *Fuentes*, 92 U. S. 20, and has been subsequently reaffirmed: *Boom Co.* v. *Patterson*, 98 U. S. 403; *Northern Pacific Terminal Co.* v. *Lowenberg*, 18 Fed. Rep. 339 (U. S. Cir. Ct. Dist. Oregon). If such a controversy is involved, this constitutes a suit within the meaning of the removal act, and may be transferred to the federal courts, provided, of course, that the suit is between citizens of different states, or there is a federal question involved, and the amount in dispute exceeds $500, notwithstanding that it may have been brought in a state court of limited jurisdiction: *Gaines* v. *Fuentes*, *supra;* Dillon on Removal of Causes, 3d ed., p. 60, sect. 48. But see *Rathbone Oil Co.* v. *Rauch*, 5 West Va. 79, where it is held that no motion to remove a cause can be made before a justice of the peace, for the reason that this is not a state court within the meaning of the law of Congress. The act reads "*any* state court."

Condemnation Proceedings.—This question has been more frequently contested, perhaps, in condemnation proceedings than in any other kind of cases, and several close points have been raised as to the propriety or right of the federal courts to assume jurisdiction of such proceedings.

1. It has been urged that such are not judicial proceedings; that the exercise of the right of eminent domain belongs exclusively to the state, and that the fact that it is delegated by the state legislature to corporations does not give the proceedings a judicial character. This reasoning is specious. In all such proceedings there is necessarily a contest between the party seeking to condemn and the owner of the property. The necessity of the taking and the value are always involved. These questions are to be referred to some tribunal which, in determining them, necessarily exercises judicial powers, whatever be the nature of such tribunal in other respects. It adjusts the rights of the parties, standing adversely to each other. This is understood to be the province of a court of justice: A "court is a place where justice is judicially administered," and a controversy of this kind presents all the features of a proper case for the judicial administration of justice. And it can make no difference, so far as its judicial capacity is concerned, whether it determines the questions of law or fact as they arise, or, under the particular state law, it refers them to a jury, commissioners, or referees. It is the tribunal which acts. It is the practice of many important state courts to refer cases. And the referee determines both questions of law and fact, subject to the approval of the appointing court. Nor does the fact that the state may, through its legislative department, directly appropriate private property, destroy the judicial character of the tribunal it has designated to assume control of such proceedings, when such tribunal is acting. See *Port Huron, &c., Rd.* v. *Voorhies*, 50 Mich. 506; *Toledo, &c., Rd.* v. *Dunlap*, 47 Mich. 456, 462; *In re N. Y. Cent. Rd.* 66 N. Y. 407, 409, where this objection is fully considered.

2. And it has been contended, that, although this is a proceeding partaking of a judicial nature, yet not a judicial proceeding in the ordinary sense, hence not a "civil suit" as contemplated by the removal act.

3. It has also been urged that this is virtually a proceeding between the state and the party seeking to condemn, there-

fore not subject to the federal jurisdiction.

Illustration Cases.—The cases fully answer these objections. *City of Chicago* v. *Hutchinson et al.*, 15 Fed. Rep. 129; s. c. 23 Am. Law Reg. 730, was a proceeding by the city of Chicago to condemn land for a public street, in the Superior Court of Cook county, against the various owners. Upon application of a non-resident landowner, the controversy between her and the city was removed to the federal court.

In *Warren* v. *Wisconsin Valley Rd.*, 6 Biss. C. C. 425, the railroad company instituted proceedings to condemn land under the Wisconsin statute. The damages were appraised by commissioners appointed by the court. The landowner appealed to the state Circuit Court. Under the statute, the appeal when properly perfected, "shall be considered an action pending in court," the appeal shall be tried by a jury unless waived, and judgment shall be rendered thereon according to the rights of the parties. This was held to be a suit of a civil nature, and removable within the act of Congress.

In *Northern Pac. Terminal Co.* v. *Lowenberg*, 18 Fed. Rep. 339 (Cir. Ct. D., Oregon), suit was commenced in the state Circuit Court of Oregon to appropriate land for the use of the railroad company. Under Oregon laws, a proceeding to condemn land is to be tried substantially the same as other civil actions. See Gen. Laws of Oregon, p. 533, sects. 42–52, Deady & Lane's ed. The cause was held removable. DEADY, J., observed (p. 342): "There is nothing in the nature or purpose of this action to prevent its removal to this court. It is an action brought against the owner of private property for the purpose of obtaining it to use it in the construction and operation of a railway, and at the same time ascertaining the value of such right or the amount that ought to be paid therefor. The statute under which it is brought provides, in effect, that it shall be commenced and proceeded in the final determination in the same manner as an ordinary action of law. The plaintiff's right to appropriate private property to its use, and the money value of such use, are in their nature proper subjects of judicial inquiry. * * * And (p. 343) the mere fact that the plaintiff derives its right to appropriate private property to its use in virtue of the right of eminent domain, is altogether immaterial. In granting this right to the plaintiff, the state has seen proper to impose the condition that in case of a controversy between it and the owner of private property, as to the right of appropriation, or the value thereof, resort must be had to a judicial proceeding to determine it. And of course such proceeding, when instituted, is subject to the usual incidents of an ordinary action or suit, including the right of removal. In this respect it stands in exactly the same category as an action of ejectment to recover possession of the same premises."

In *Boom Company* v. *Patterson*, 98 U. S. 403, the proceeding was to condemn land. Under the Minnesota statute (where land was located), the method of condemning land is, to apply to the District Court of the county where the land is situated for the appointment of commissioners to appraise its value and take proceedings for its condemnation. The landowner is to be properly notified, &c. If the award of the commissioners is unsatisfactory, either party may appeal to the District Court, where the proceeding is to be entered by the clerk, "as a case upon the docket" of the court; and the persons claiming an interest in the land, to be designated as plaintiffs, and the company seeking to condemn, as defendant. The court is then to "proceed to hear and determine the case." Issues of fact are to be tried by a jury, unless a jury be waived. The amount so found as the value of the land is to be

entered as a judgment against the company, which is subject to review by the Supreme Court of the state, on a writ of error. Mr. Justice FIELD, in speaking for the court, said (p. 406): "If that inquiry (referring to condemnation) takes the form of a proceeding before the court between parties, the owner of the land on the one side, and the company seeking the appropriation on the other, then it is a controversy subject to the ordinary incidents of a civil suit." * * * "The proceedings in the present case before the commissioners appointed to appropriate the land, was in the nature of an inquest to ascertain its value, and not a suit at law in the ordinary sense of those terms. But when it was transferred to the District Court by appeal from the award of the commissioners, it took, under the statutes of the state, the form of a suit at law (p. 407), and was thenceforth subject to its ordinary rules and incidents. The point in issue was, the compensation to be made to the owner of the land; in other words, the value of the property taken. No other question was open to consideration in the District Court: *Turner* v. *Holleran*, 11 Minn. 253. The case would have been in no essential particular different had the state authorized the company by statute to appropriate the particular property in question, and the owners to bring suit against the company in the courts of law for its value. That a suit of that kind could be transferred from the state to the federal court, if the controversy were between the company and a citizen of another state, cannot be doubted. And we perceive no reason against the transfer of the pending case that might not be offered against the case supposed." * * * The court also refers to *Gaines* v. *Fuentes*, *supra*, and approves the ruling therein; concludes with the following language: "Within the meaning of these decisions, we think the case at bar was properly transferred to the Circuit Court, and that it had jurisdiction to determine the controversy."

Probate Proceedings. — It has been questioned whether the federal courts may acquire jurisdiction of probate proceedings under the removal act, it being insisted that they are matters exclusively within the jurisdiction of the state courts, and that Congress never intended to draw these matters to the federal courts; and, even if such is the intention, Congress has no power to do this. But the federal courts have always asserted their authority to determine such controversies, and place them upon the same footing concerning the right of jurisdiction, as ordinary civil suits, proceeding upon the principles heretofore stated.

In the leading case of *Gaines* v. *Fuentes*, 92 U. S. 10, the action was brought to annul a will, and to recall the decree by which it was probated, and was instituted in a state court of Louisiana which had jurisdiction over the estates of deceased persons. Mr. Justice FIELD, in giving the opinion, made the following observation, p. 19: "This act (the removal act), covers every possible case involving controversies between citizens of the state where the suit is brought and citizens of other states, if the matter in dispute, exclusive of costs, exceeds the sum of $500. It mattered not whether the suit was brought in a state court of limited or general jurisdiction. The only test was, did it involve a controversy between citizens of the state and citizens of other states, and did the matter in dispute exceed a specified sum?" *Payne* v. *Hook*, 7 Wall. 425, is an instructive case upon this question. The suit was a proceeding in equity against an administrator brought by one of the distributees, a citizen of Virginia, to obtain her distributive share in the estate, in the United States Circuit Court for the District of Missouri. The jurisdiction of the federal court was contested on the ground that because of the peculiar structure of the Missouri probate system

such a proceeding could not be maintained in any other than the probate court of that state. But it was held that such a proceeding was cognisable in the federal court; that the United States Circuit Court for any district embracing a particular state will have jurisdiction of an equity proceeding against an administrator; "that the equity jurisdiction conferred on the federal courts is the same that the High Court of Chancery in England possesses, is subject to neither limitation or restraint by state legislation, and is uniform throughout the different states of the Union." See *United States* v. *Howland*, 4 Wheat. 108; *Green's Administrator* v. *Creighton*, 23 How. 90; *Robinson* v. *Campbell*, 3 Wheat. 212; *Pratt* v. *Northam*, 5 Mason 95; *Williams* v. *Benedict*, 8 How. 107; *Vaughan* v. *Northup*, 15 Pet. 1; *Tarver* v. *Tarver*, 9 Id. 174; *Gaines* v. *Chews*, 2 How. 619; *Case of Broderick's Will*, 21 Wall. 503; *Barry* v. *Mercein*, 5 How. 103; *Craigie* v. *McArthur*, 4 Dillon 474; *Burts* v. *Loyd*, 45 Ga. 104; *Hargroves* v. *Redd*, 43 Id. 143; *Gaines* v. *New Orleans*, 6 Wall. 462; *Gaines* v. *Hennen*, 24 How. 553; *Mallett* v. *Dexter*, 1 Curtis C. C. 178. But see *Du-Vivier* v. *Hopkins*, 116 Mass. 125, which hold that a proceeding to establish a claim against the estate of a deceased person, which was had before a commissioner appointed by the probate court, which proceeding, at the time of the application for removal, was pending, on appeal, from such commissioner, in the superior court, could not be removed. Application for the probate of a will cannot be removed. *In re Frazer*, 6 Cir. Mich. 1878; 18 Alb. L. J. 353; s. c. 7 Cent. L. J. 227.

Ellis v. *Davis*, 109 U. S. 485, fully sustains the ruling of *Gaines* v. *Fuentes*, *supra*. Mr. Justice MATTHEWS, in an elaborate opinion, fully reviews the cases.

EUGENE MCQUILLIN.

St. Louis, Mo.

Prerogative Court of New Jersey.

GANS *v.* DABERGOTT.

Although a statute authorizing the grant of letters of administration to creditors upon failure of relatives to apply in a specified time, contains no provision for notice to the relatives, the Orphans' Court may by rule require previous notice to relatives, and in such case, letters granted without such notice are invalid.

APPEAL from decree of Essex Orphans' Court.

J. W. Field, for appellant.

A. W. Rosinger, for respondent.

The opinion of the court was delivered by

RUNYON, Ordinary.—Paul Dabergott, who was a resident and inhabitant of the city of Orange, in Essex county, died at sea September 1st, 1884, leaving a widow (the respondent) in Orange, where he carried on his business. He died intestate. His widow did not take out nor apply for letters of administration upon his estate within fifty days from his death. On the 28th of October,